

Order

Michigan Supreme Court
Lansing, Michigan

December 11, 2008

Clifford W. Taylor,
Chief Justice

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& (17)

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

ANGLERS OF THE AUSABLE, INC.,
MAYER FAMILY INVESTMENTS, LLC,
and NANCY A. FORCIER TRUST,
Plaintiffs-Appellees,

v

SC: 137725
COA: 284315
Otsego CC: 07-012072-AA

DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Defendant-Appellee,

and

MERIT ENERGY COMPANY,
Defendant-Appellant.

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the September 24, 2008 order of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for consideration as on leave granted. The Court of Appeals shall consider on remand (1) whether the Otsego Circuit Court erred in finding that defendant Merit's Certificate of Coverage exceeded the scope of the Michigan Department of Environmental Quality's July 23, 2004 General Permit; (2) whether, by analyzing defendant Merit's Certificate of Coverage under the Michigan Environmental Protection Act (MEPA), MCL 324.1701 *et seq.*, the Otsego Circuit Court's ruling of January 31, 2008 exceeded the proper scope of review of an administrative ruling; and, if not, (3) whether the Otsego Circuit Court erred in basing its MEPA ruling on the factual record developed in the parties' separate circuit court action. *Human Rights Party v Michigan Corrections Commission*, 76 Mich App 204 (1977). We note that there are related cases pending in the Court of Appeals. Nos. 279301, 279306, 280265, and 280266.

CAVANAGH, WEAVER, and KELLY, JJ., would deny leave to appeal.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 11, 2008

Corbin R. Davis

Clerk